IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6551 OF 2006

Jagdishraj S.Hora .. Petitioner.
Vs.
Shamsundar Shivnathraj Hora & Ors. .. Respondents.

Mr.S.S.Kanetkar for the petitioner.
Mr.Anil Subramaniam for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 4TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent no.1.

2. The petitioner has impugned the order dated 5.8.2006 by which the trial Court has allowed the application filed by the respondent-plaintiff at Exhibit-174 allowing them to lead evidence in rebuttal. Mr.Kanetkar, learned counsel for the petitioner submitted that the petitioner while closing his evidence had not reserved the right to lead evidence in rebuttal as contemplated by Order 18 Rule 3 and, therefore, the Court has committed grave error in allowing the application filed by the respondent-plaintiff. In support of his contention he placed reliance upon judgment of this Court in **Nipendrachandar Bid Vs. Rajaram Pulp and Paper Mills Ltd. 1979 Mh.L.J. 220**. I perused the impugned order

as also the application Exhibit-174 and reply thereto filed by the petitioners. It appears that the suit is for partition and several issues were framed after hearing both the sides. The petitioner lead evidence to prove the issues of which burden was on him and thereafter filed pursis closing his evidence. The defendant did not lead any evidence at all and in view thereof the respondent-plaintiff filed the application at Exhibit-174 seeking permission to lead evidence in rebuttal insofar as the issues of which burden is on the defendants. The respondent-plaintiff has already filed affidavit in lieu of his examination in rebuttal. Keeping that in view and considering the reasons recorded by the learned Judge in paragraph 6 of the order I am not inclined to interfere with the order impugned in the present writ petition under Article 227 of the Constitution of India. However, it is open for the petitioner to raise an objection to the statement/s made in the said affidavit if, according to the petitioner, they are not in the nature of rebuttal and if such objections are raised the appeal Court shall deal with same in accordance with law. The judgment relied upon by Mr.Kanetkar, learned counsel is of no avail to the petitioner in view of the peculiar facts and circumstances of the case. The writ petition is disposed of.

(D.B.Bhosale, J.)